



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 131113952-6999-02]**

**RIN 0648-BD78**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper  
Fishery off the Southern Atlantic States; Regulatory Amendment 16**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Regulatory Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the current seasonal prohibition on the use of black sea bass pot gear in the South Atlantic and adds an additional gear marking requirement for black sea bass pot gear. The purpose of this final rule is to reduce the adverse socioeconomic impacts from the current seasonal black sea bass pot gear prohibition while continuing to protect Endangered Species Act (ESA) listed North Atlantic right whales (NARW) in the South Atlantic. This final rule also helps to better identify black sea bass pot gear in the South Atlantic.

**DATES:** This rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*], except for the amendments to § 622.183(b)(6) that are effective

*[insert date of publication in the FEDERAL REGISTER].*

**ADDRESSES:** Electronic copies of Regulatory Amendment 16, which includes an environmental impact statement (EIS), a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at [https://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/sg/2013/reg\\_am16/index.html](https://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2013/reg_am16/index.html).

Comments regarding the burden-hour estimates, clarity of the instructions, or other aspects of the collection of information requirements contained in this final rule (see the Classification section of the preamble) may be submitted in writing to Adam Bailey, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; or the Office of Management and Budget (OMB), by e-mail at [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov), or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Nikhil Mehta, telephone: 727-824-5305, e-mail: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Black sea bass is in the snapper-grouper fishery and is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 4, 2013, NMFS published a notice of intent to prepare a draft EIS for Regulatory Amendment 16 and requested public comment (78 FR 72968). On October 23, 2015, the notice of availability for the draft EIS was published and public comment was also requested (80 FR 64409). The notice of availability for the final EIS for Regulatory Amendment 16 published on July 1, 2016 (81 FR 43198). On August 11, 2016, NMFS published a proposed rule for Regulatory Amendment 16 and requested public comment

(81 FR 53109). The proposed rule and Regulatory Amendment 16 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Regulatory Amendment 16 and this final rule is provided below.

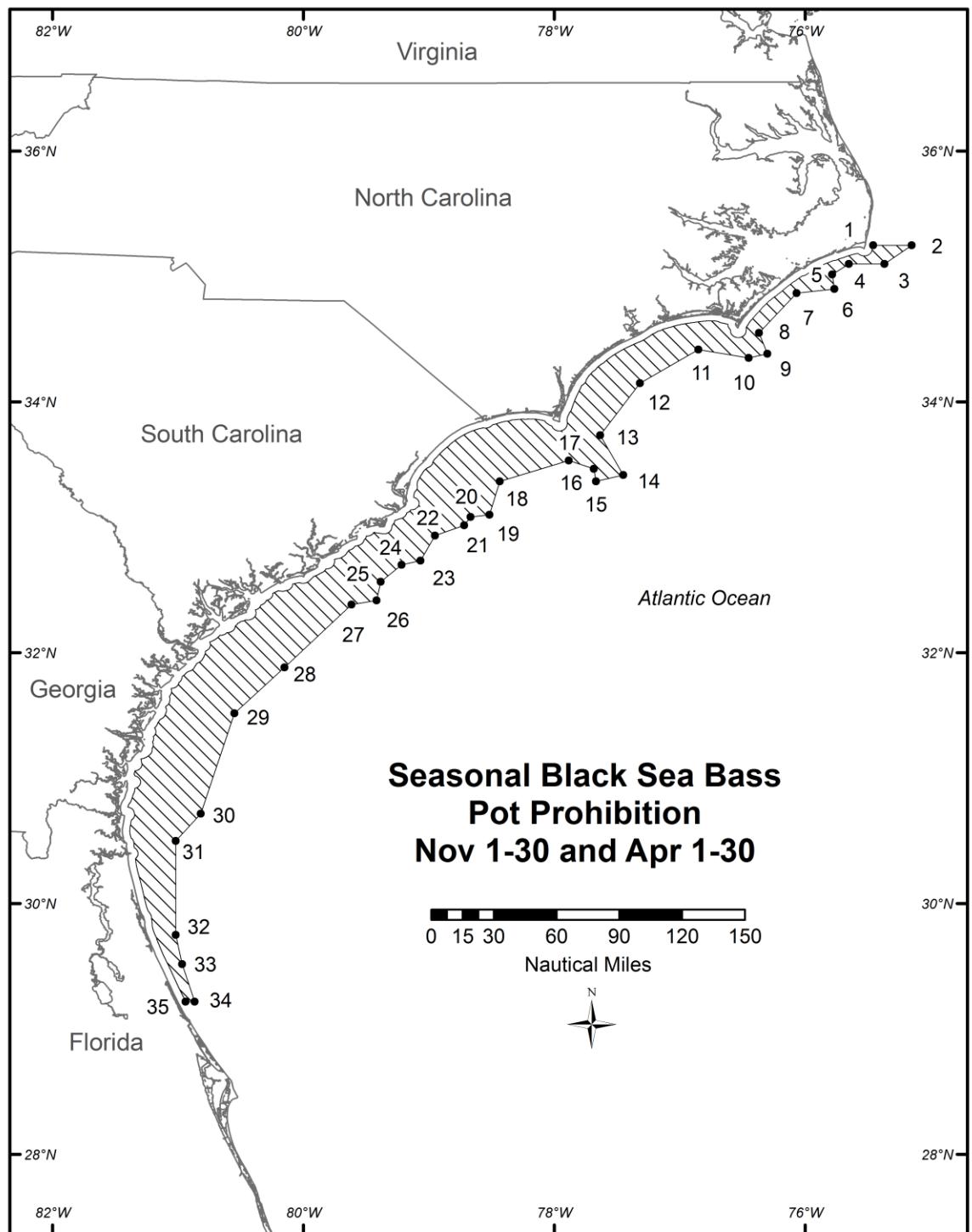
### **Management Measures Contained in this Final Rule**

This final rule implements modifications to the current black sea bass pot seasonal closure. This final rule also modifies the buoy line rope marking requirements for black sea bass pots.

#### *Black Sea Bass Pot Gear Seasonal Prohibition*

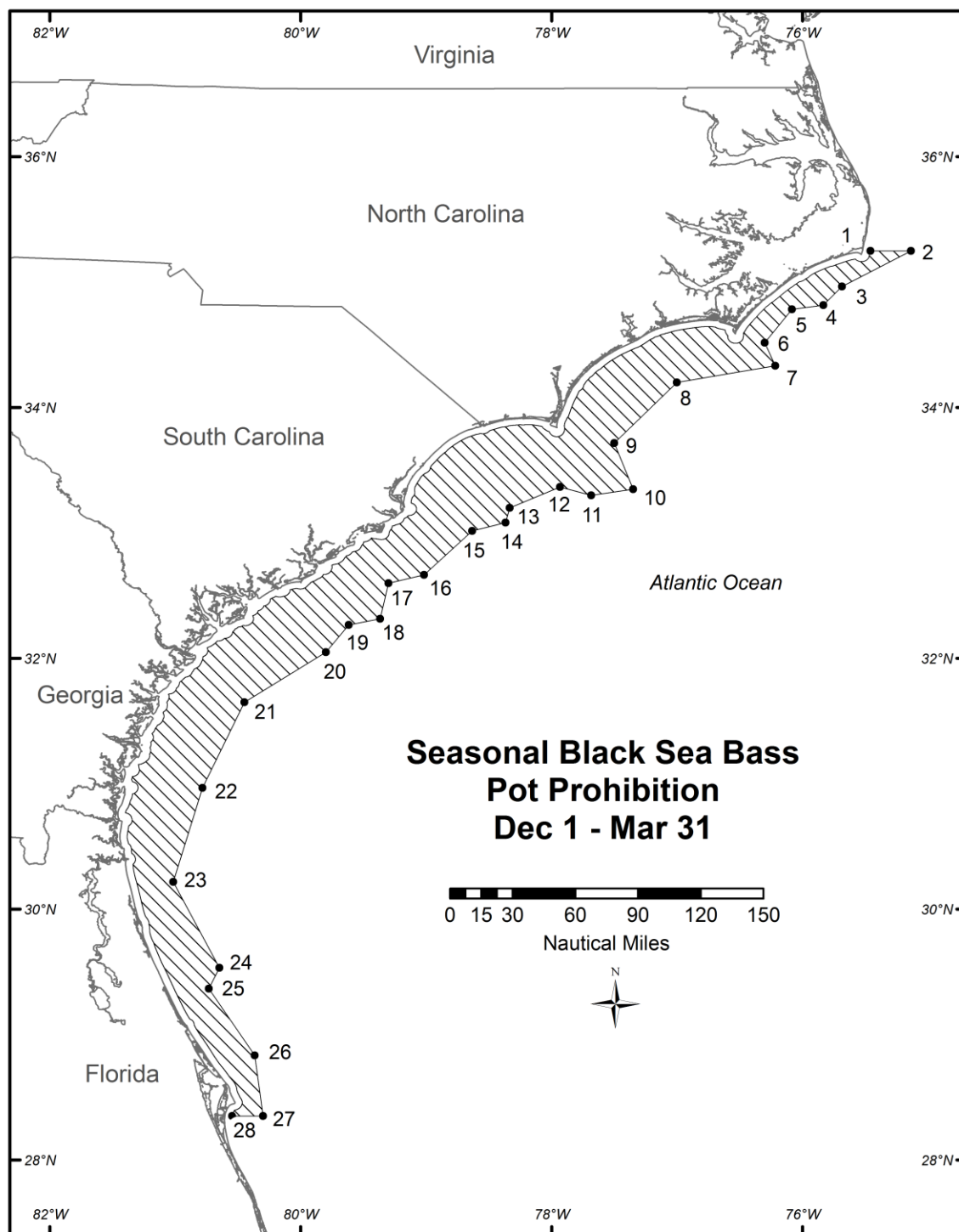
As established through Regulatory Amendment 19 to the FMP, black sea bass pot gear is prohibited in the South Atlantic exclusive economic zone (EEZ) annually from November 1 through April 30 (78 FR 58249, September 23, 2013). This final rule retains the November 1 through April 30 prohibition on the use of black sea bass pots but modifies the boundaries of the prohibition. This rule revises the South Atlantic EEZ-wide seasonal closure to a closure with two temporal and spatial components. The first closure period is for the months of November and April and the second closure period is for the months of December through March, each year. The first closure period is illustrated by Figure 1 below. During the November and April seasonal prohibition, the eastern boundary of the sea bass pot closed area off North and South Carolina is closer to shore than during the months of December through March.

#### **Figure 1. Black Sea Bass Pot Seasonal Prohibition During November and April.**



During the black sea bass pot seasonal prohibition from December through March, each year, the closure area is larger than during the seasonal prohibition during November and April, particularly off Georgia and Florida. Waters off the coast of Georgia and Florida represent the primary right whale calving grounds in the South Atlantic EEZ. The black sea bass pot seasonal closure for December through March is illustrated in Figure 2 below.

**Figure 2. Black Sea Bass Pot Seasonal Prohibition During December Through March.**



The alternatives considered in Regulatory Amendment 16 for the black sea bass pot seasonal prohibition were developed considering spatial, temporal, and environmental variables. Spatial variation in the distribution of right whales is influenced by environmental variables such as water temperature, depth, and distance to shore. The closed areas in this final rule incorporate these environmental variables and spatial distribution patterns to minimize the risk of interactions of NARWs with black sea bass pot gear.

During the months of November and April, the area closed through this rule prohibits black sea bass pots inshore of an area which represents 91 percent of historical right whale sightings off Florida and Georgia; and off North Carolina and South Carolina, the black sea bass pot prohibition would apply to Federal waters shallower than 25 meters (m) in depth. During December through March, the area closed through this final rule prohibits black sea bass pots shallower than 25 m in depth off Florida and Georgia; and from the Georgia/South Carolina border to Cape Hatteras, North Carolina, the prohibition applies to Federal waters that are shallower than 30 m in depth. The bathymetric area closed during December through March is based on right whale sightings by depth and captures 97 percent and 96 percent of right whale sightings off the North Carolina/South Carolina area, and Florida/Georgia area, respectively.

The reduction in the closure areas described in this final rule are expected to minimize adverse socioeconomic effects of the current November through April black sea bass pot prohibition by increasing the area available to fish using black sea bass pots. In addition, the changes are expected to increase the flexibility of black sea bass pot endorsement holders to fish with this gear while maintaining an appropriate level of

protection for NARWs.

On December 1, 2016, NMFS completed a new ESA consultation and biological opinion on the South Atlantic snapper-grouper fishery. The biological opinion concluded that the continued authorization of the South Atlantic snapper-grouper fishery, including the black sea bass component, is not likely to jeopardize the continued existence of North Atlantic right whales, the only listed whale species in the South Atlantic region that may be adversely affected by the fishery.

This final rule also allows for vessel transit through the black sea bass pot closed areas, providing that the black sea bass pot gear is appropriately stowed on the vessel. Transit is defined as non-stop progression through the closed area; fishing gear appropriately stowed means all black sea bass pot gear must be out of the water and on board the deck of the vessel. All buoys must either be disconnected from the gear or stowed within the sea bass pot. The disconnected buoys may remain on deck.

#### *Gear Marking Requirements*

Fish traps and pot buoy lines, including black sea bass pots, are currently required to have specific line marking requirements during certain times of the year and in the locations described in the Atlantic Large Whale Take Reduction Plan (ALWTRP)(see 50 CFR 229.32(b)). The ALWTRP includes at least three areas where black sea bass pots are regulated and fished. This includes the Offshore Trap/Pot Waters Area, Southern Nearshore Trap/Pot Waters Area, and the U.S. Southeast Restricted Area North.

Additionally, the FMP contains separate gear requirements, and Regulatory Amendment 16 modifies the current gear marking requirements under the FMP by requiring additional markings for black sea bass pot buoy lines. This final rule requires that



an additional 12-inch (30.5 cm) wide purple band be added onto the buoy line at the end of, and directly adjacent to, each of the currently required 12-inch (30.5 cm) colored marks that are required through the ALWTRP, described in 50 CFR 229.32(b). Within the area of the Council's jurisdiction for managing black sea bass, the additional black sea bass gear marking requirements are required to be in place in Federal waters from September 1 through May 31 in the Offshore Trap/Pot Waters Area and the Southern Nearshore Trap/Pot Waters Area, and from November 15 through May 31 in the Southeast U.S. Restricted Area North. The Council's requirement that sea bass pot gear have additional gear-specific marking will help distinguish black sea bass pots from other fishing gear that could be encountered by whales.

### **Comments and Responses**

A total of 13 comment submissions were received on the proposed rule from individuals, a Federal agency, a commercial fishing organization, and non-governmental organizations (NGOs). Eight comments were in favor of the preferred actions in Regulatory Amendment 16 and three comments were opposed to the use of black sea bass pots in general in the South Atlantic EEZ. Two comment submissions received from the Federal agency and the NGOs expressed concerns over the actions in Regulatory Amendment 16. Specific comments related to the actions in Regulatory Amendment 16 and the proposed rule, as well as NMFS' respective responses, are summarized below.

*Comment 1:* Black sea bass pot gear marking should be a year-round requirement for all black sea bass pot buoy lines rather than just a seasonal measure as required in Regulatory Amendment 16.

*Response:* There currently are gear marking requirements for black sea bass pots as

required through the ALWTRP, and separate gear marking requirements as required through the FMP. This final rule requires buoy line marking for black sea bass pots in addition to those already required through the ALWTRP. These additional markings are required in areas and during times similar to the existing ALWTRP gear marking requirements. The additional buoy line markings are required from September 1 through May 31, in the ALWTRP Offshore Trap/Pot Waters Area and Southern Nearshore Trap/Pot Waters Area, and from November 15 through May 31, in the ALWTRP Southeast U.S. Restricted Area North. NMFS and the Council determined that the new requirement for black sea bass pot gear marking, together with existing requirements, provides a mechanism to adequately identify the black sea bass pot component of the snapper-grouper commercial sector, given the timing and location of right whale expected occurrence. In addition, black sea bass pot fishers have reported that they will likely leave the newly required gear markings on their buoy lines year-round since it would require additional effort for them to remove it for a limited season. Therefore, the Paperwork Reduction Act (PRA) burden estimates assume that the required gear markings would stay on the buoy lines as long as the marking is clearly visible as required by the rule (50 C.F.R. 622.189(g)), and not be applied and removed from the buoy lines each season.

*Comment 2:* NMFS should monitor and enforce the requirement for additional black sea bass pot gear marking required in this final rule.

*Response:* NMFS agrees that monitoring and enforcement of fishing gear marking requirements increases the effectiveness of these measures and intends to do that for the specific measures in Regulatory Amendment 16 upon implementation of this final rule. NMFS's Office of Law Enforcement (NOAA/OLE) and the United States Coast Guard

(USCG) have the authority and the responsibility to enforce regulations implementing FMPs. NOAA/OLE special agents and officers specialize in living marine resource violations and provide fisheries expertise and investigative support for the overall fisheries mission, while the USCG provides at-sea patrol services for the fisheries mission.

To increase the effectiveness of fishing regulations, NOAA supplements at-sea and dockside inspections of fishing vessels through Cooperative Enforcement Agreements and Joint Enforcement Agreements with most of the states in the South Atlantic region. These agreements can include granting authority to state officers to also enforce the laws for which NOAA/OLE has jurisdiction. Additionally, all of the states in the South Atlantic region have their own law enforcement officers that routinely patrol and enforce fisheries regulations in state waters.

*Comment 3:* Several commenters stated that NMFS neglected to consider whether gear restrictions more stringent than those required by ALWTRP are needed in an area with juveniles and calves. In particular, the commenters stated that line breaking strength of greater than 2,200 lb (998 kg) is risk prone to the whales, and vertical lines heavier than 1,700 lb (771 kg) should not be allowed. The commenters were disappointed that the Agency has proposed to re-open a closed area and yet apparently failed to address the need to reduce risk beyond the status quo in the ALWTRP. The commenters noted that a recent peer-reviewed paper by Knowlton *et al.* (2015), though largely referencing the entanglement of adults, indicates that line breaking strengths of less than 1,700 lb (771 kg) would reduce the likelihood of life-threatening entanglements, and they noted that adult right whales have been found dead, entangled in gear with unbroken 600 lb (272 kg) weak links.

*Response:* While the Council considered a measure in the amendment to require a breaking strength lower than that required under the ALWTRP, they did not choose that measure because they changed their preferred alternative during the development of the black sea bass pot seasonal closure to require fishers to travel further offshore to fish for black sea bass during November 1 through April 30, when the weather is likely to be more inclement (such as increased currents) than at other times of the year. The Council concluded that fishing in these areas during the winter would likely put greater stress on the fishing gear in the water, and a breaking strength that is lower than is currently required under the ALWTRP could increase the number of lost black sea bass pots. NMFS agrees that if fishermen used vertical lines with a breaking strength less than 1,700 lb (771 kg), the risk of life-threatening entanglements to right whales would be reduced from current levels, however, with the Council's choice of closures for the black sea bass pot sector, the risk of potential right whale entanglement with black sea bass pot gear is low (Farmer *et al.* 2016). The recently completed ESA biological opinion on this fishery addresses vertical line breaking strength and contains a conservation recommendation that promotes the use of ropes with breaking strengths equal to or less than 1,700 lb (771 kg) for the black sea bass pot sector (50 CFR 402.2). NMFS is currently evaluating the implementation of this recommendation.

*Comment 4:* Passive acoustic recording arrays have been deployed off Georgia, South Carolina, and southern North Carolina since 2015; however, data from those arrays have yet to be published in a scientific journal describing the frequency of call rates at different distances from shore. Data on right whale call rates from these arrays should be analyzed to assess the probabilities of right whales encountering black sea bass pot buoy

lines seaward of the offshore of the closure boundaries in Regulatory Amendment 16.

*Response:* National Standard 2 of the Magnuson-Stevens Act requires that conservation and management measures shall be based upon the best scientific information available, and NMFS has determined that the actions in Amendment 16 and this final rule are based on the best scientific information available. Based on NMFS's review of whale sightings, the models used for this rulemaking have performed well in predicting right whale distribution, and NMFS disagrees that unpublished data from these acoustic arrays should be included as part of Regulatory Amendment 16.

*Comment 5:* One commenter agrees that the modified seasonal closures from November 1 through April 30 for the black sea bass pot component would substantially reduce the entanglement risk to right whales but suggests that the minimum distance from shore for the seaward boundaries of the black sea bass pot closure should be revised to extend to at least 30 nautical miles (nm) from shore between Cape Hatteras and the Florida-Georgia border and at least 20 nm from shore in Duval and St. Johns Counties in Florida.

*Response:* NMFS disagrees that the boundaries of the black sea bass pot closure should be revised from those being implemented in this final rule. During the months of November and April, the area closed through this rule prohibits black sea bass pots inshore of an area which represents 91 percent of historical right whale sightings off Florida and Georgia; and off North Carolina and South Carolina, the black sea bass pot prohibition applies to Federal waters shallower than 25 m in depth. During December through March, the area closed through this final rule prohibits black sea bass pots shallower than 25 m in depth off Florida and Georgia; and from the Georgia/South Carolina border to Cape

Hatteras, North Carolina, the prohibition applies to Federal waters that are shallower than 30 m in depth. This bathymetric area is based on right whale sightings by depth and captures 97 percent and 96 percent of right whale sightings off the North Carolina/South Carolina area, and Florida/Georgia area, respectively.

Right whales are likely to be most abundant offshore of Duval and St. Johns Counties in Florida from December through March. In Regulatory Amendment 16, for December through March off Duval and St. Johns Counties, the distance of the black sea bass pot gear offshore boundary to the shoreline is greater than 20 nm from shore, except for an approximately 15 square nm area off the boundary that separates Duval and St. Johns Counties. NMFS has determined that changing the boundary for that 15 nm area, as the commenter requests, would not result in a significant change in the predicted relative risk to right whales from black sea bass pot gear.

The analysis used in Regulatory Amendment 16 estimated that the area prohibition for black sea bass pots chosen by the Council has a low relative risk of entanglement of whales in black sea bass pot lines when compared with the other areas considered, and NMFS has determined that the analysis is based on the best scientific information available.

*Comment 6:* The proposed depth thresholds for the offshore boundaries do not adequately capture all areas likely to be used by right whales during the peak months of right whale occurrence. The analysis used to evaluate the alternatives in Regulatory Amendment 16 is based almost entirely on right whale sightings from aerial surveys. Aerial surveys under-represent right whale occurrence and entanglement risks for areas farther offshore. Other analyses of sighting data (*e.g.*, Knowlton et al. 2002, Schick *et al.*

2009) indicate that a large majority of sightings have occurred within approximately 10 or 15 nm of shore, but conclude that habitat extending 30 nm from shore should be considered important to migrating and calving whales off the southeastern United States.

*Response:* NMFS disagrees. In Regulatory Amendment 16, right whale occurrence was predicted from two spatial distribution models that were based on a robust data set: survey data for Florida-South Carolina during the calving season from 2003-2004 to 2012-2013 (Gowan and Ortega-Ortiz 2014) and surveys off North Carolina from October 2005-April 2006, December 2006-April 2007, and February 2008-April 2008 (Farmer *et al.* 2016). These two models allowed for extrapolation of predicted right whale occurrence in areas that were not surveyed (*i.e.*, the models controlled for bias created by shore-based search effort).

The commenter cited Knowlton *et al.* (2002) and Schick *et al.* (2009) to support extending the black sea bass pot closure 30 nm from shore. However, Knowlton *et al.* (2002) summarized sightings data in the mid-Atlantic, but did not correct those sightings for survey effort as was done in the models used in the development of Regulatory Amendment 16. Schick *et al.* (2009) modeled right whale spatial distribution in the mid-Atlantic, but the results have a high degree of uncertainty as the study only used data from two female right whales, one tagged in 1996 and the other tagged in 2000. NMFS has determined that the analysis in Regulatory Amendment 16 represents the best scientific information available.

*Comment 7:* Limited telemetry and recent acoustic monitoring suggest that waters beyond 15 or 20 nm from shore are used by right whales more frequently than aerial survey data indicate. For example, data on right whales tagged with telemetry devices to document

northbound migration routes from the southeastern U.S. calving grounds (Andrews 2016, Slay *et al.* 2002) indicate that they regularly use waters out to 30 nm from shore and therefore are not confined to waters shallower than 25 or 30 m in depth.

*Response:* There are varying levels of error and uncertainty associated with the preliminary telemetry tracks gathered from the two studies referenced (Andrews 2016, Slay *et al.* 2002), and the data have not been processed completely to account for those errors. Andrews (2016) summarizes the results of a right whale tagging study and contains a map that illustrates the estimated tracks of right whales tagged during the study. Slay *et al.* (2002) describes the results of a January 1999 study in which a female right whale accompanied by her calf was tracked via radio off northeast Florida and southeast Georgia. The researchers used telemetry to follow the mother/calf pair for 140 hours. That report overlays the whales' track with that of sea surface temperature and the temperatures associated with the track are consistent with modeled right whale distribution in Gowan and Ortega-Ortiz (2014), which was the basis for the analysis contained in Regulatory Amendment 16. Since the study described in Slay *et al.* (2002) used telemetry data, NMFS believes that the results have a high degree of uncertainty. However, the spatial distribution information learned from the one right whale mother/calf pair in Slay *et al.* (2002) was adequately represented in the model used by Gowan and Ortega-Ortiz (2014) during the development of Regulatory Amendment 16 and this final rule.

*Comment 8:* A 2016 study by the U.S. Navy shows that right whale call rates detected by an acoustic monitoring array moored perpendicular to the coast off Cape Hatteras, North Carolina, are highest within 15 or 20 nm of shore, but significant numbers of right whale calls also occur between 20 and 40 nm offshore.



*Response:* The U.S. Navy buoys in the acoustic array appeared to be placed at approximately 5 nm increments from the shoreline (*i.e.*, 5, 10, 15, 20, and 25 nm from the shoreline). The offshore boundary of the black sea bass pot closure area extends nearly 20 nm offshore off North Carolina. From December 2013 through March 2014, the study indicates that the majority of right whale calls were detected at buoys that were located between 10 and 15 nm from the Cape Hatteras, North Carolina, shoreline. Fewer calls were detected 20 nm from the shoreline (when compared to the calls detected at 10 and 15 nm) and even fewer were detected 25 nm from shore. From October 2014 through February 2015, the majority of right whale calls were detected at buoys 5 and 10 nm from the shoreline (the buoy 15 nm from shore was offline from December 2014 through February 2015). Fewer right whale calls were detected 20 and 25 nm from shore. This study did not correlate the number of calls to the number of whales nor did they specify the detection range of the acoustic buoys. The U.S. Navy buoys in the study did not extend out to 40 nm as the commenter suggests, and the buoys were not designed with the intent of detecting whale calls. Therefore, NMFS has determined that the best scientific information available on right whale spatial distribution was used in Regulatory Amendment 16, and serves as the basis for this final rule.

*Comment 9:* The black sea bass pot seasonal closures should be extended to the shoreline, and black sea bass pot fishing in state waters should be prohibited at the same times that Federal waters are closed. Similar regulations should be in place for fishing gear in both state and Federal waters.

*Response:* The Council does not manage black sea bass in state waters, because the Magnuson-Stevens Act gives the Council the authority to manage fisheries in the EEZ, off

North Carolina, South Carolina, Georgia and Florida (16 U.S.C. 1852(a)(1)(C)). However, NMFS and the Council informed the states of North Carolina, South Carolina, Georgia and Florida of the measures proposed for black sea bass pots during the development and implementation of Regulatory Amendment 16, and NMFS intends to ask each of these states to issue regulations compatible with this final rule.

*Comment 10:* The prohibition on winter black sea bass pot fishing outside of the right whale critical habitat area should be ended and areas as shown in Alternative 2 of Action 1 (the previous designation of North Atlantic right whale critical habitat) should be closed to fishing with black sea bass pot gear.

*Response:* NMFS disagrees that the area shown in Alternative 2 of Action 1 to modify the annual November 1 through April 30 prohibition on the use of black sea bass pot gear in Regulatory Amendment 16 should be the only area closed to fishing with black sea bass pot gear. The area shown in Alternative 2 of Action 1 is based on right whale critical habitat that was implemented in 1994, and on January 26, 2016, NMFS issued a final rule that created an expansion of the right whale critical habitat area (81 FR 4838) that was effective February 26, 2016. This recent determination of critical habitat is based on an increased understanding of where North Atlantic right whales occur, or are most likely to occur, off the southeastern United States. The Council did not include an alternative to base the closed area on the revised right whale critical habitat because the Council voted for final approval of Regulatory Amendment 16 in December 2015, which was prior to the publication of the final rule for the North Atlantic right whale critical habitat area expansion.

In addition, the analysis in Regulatory Amendment 16 indicated that Alternative 2

in Action 1 would introduce the greatest amount of entanglement risk to large whales, relative to all alternatives, because predicted North Atlantic right whale presence is higher outside of the geographic boundaries of Alternative 2.

*Comment 11:* NMFS should not modify the current restrictions on black sea bass pots because this type of fishing gear captures large amounts of fish and reduces the availability of black sea bass to fishermen using hook-and-line gear.

*Response:* NMFS agrees that commercial fishermen can harvest more black sea bass using pot gear than hook-and-line gear. In addition, NMFS acknowledges that this final rule will likely increase the benefits to fishers using black sea bass pot gear and decrease the benefits to fishers using hook-and-line gear, as described in the **Classification** section of this final rule. However, NMFS estimates that revenue losses to each vessel using fishing gear other than black sea bass pots will be relatively small.

Though commercial harvest is greater using black seas bass pot gear, there are only 32 fishers with an endorsement who may harvest black sea bass using pots, and as implemented through Amendment 18A to the FMP, each endorsement holder is limited to a maximum of 35 pots, a commercial trip limit of 1,000 lb (454 kg) gutted weight, and a requirement that pots be brought back to shore after each trip (77 FR 32408, June 1, 2012). The Council determined that modifying the current closure under this final rule will reduce the adverse socioeconomic impacts and increase the flexibility of black sea bass pot endorsement holders to fish with this gear, while continuing to protect ESA-listed whales in the South Atlantic region.

### **Classification**

The Regional Administrator, Southeast Region, NMFS, has determined that this

final rule is consistent with Regulatory Amendment 16, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS's responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

The preamble to the final rule provides the statement of the need for and objectives of this final rule. The Magnuson-Stevens Act provides the statutory basis for this final rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or record-keeping requirements are introduced by this final rule. However, the final rule will require that for each black sea bass pot buoy line an additional 12-inch (30.5 cm) wide purple band be added at the end of, and directly adjacent to, each of the currently required 12-inch (30.5 cm) colored marks required under the ALWTRP discussed above. Similar to the current requirements under the ALWTRP, this marking requirement does not need an additional expertise on the part of fishermen. NMFS estimates that this requirement will cost each pot endorsement holder about an additional \$5 annually if surveyor's tape is used for line marking, or about an additional \$90 annually if paint is used instead. The estimated additional annual time burden associated with the marking requirement is up to approximately 3.5 hours annually.

No comments specific to the IRFA or on the economic impacts of the rule more

generally were received from the public or from the Chief Counsel for the Advocacy of the Small Business Administration and, therefore, no public comments are addressed in this FRFA. No changes to the proposed rule were made in response to public comments. NMFS agrees that the Council's choice of preferred alternative will best achieve the Council's objectives for Regulatory Amendment 16 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule to directly affect federally permitted commercial fishermen fishing for black sea bass in the South Atlantic. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

Pursuant to the RFA, and prior to July 1, 2016, an IRFA was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly affected by this regulatory action are commercial fishing businesses and were considered small under the SBA's size standards, and they all will continue to be considered small

under the new NMFS standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

As of December 31, 2014, there were 32 holders of the Federal black sea bass pot endorsement to the snapper-grouper commercial permit. Since that time one endorsement holder has dropped out of the black sea bass pot component of the commercial sector, but the current analysis uses 32 endorsement holders because historical records of these 32 endorsement holders were used in Regulatory Amendment 16. Using the records of 32 endorsement holders for determining the economic effects is not expected to inflate the analytical results because only an average of 31 vessels fished for black sea bass using pots.

From the 2000/2001 through 2013/2014 fishing years, these endorsement holders used an average of 31 vessels fishing for black sea bass using pots. These vessels generated total combined revenues (2014 dollars) of \$732,717 from black sea bass, \$228,468 from other species jointly landed with black sea bass, and \$248,662 from all other species in trips where black sea bass was not caught. The average annual revenue per vessel from all species, including black sea bass, landed by these vessels was \$38,715 (2014 dollars). During the same time period, an average of 215 vessels using gear other than sea bass pots landed at least 1 lb (0.45 kg) of black sea bass. These vessels generated dockside total combined revenues (2014 dollars) of \$199,574 from black sea bass, \$3.838 million from other species jointly landed with black sea bass, and \$7.680 million from all other species in trips where black sea bass was not caught. The average annual revenue per vessel from all species, including black sea bass, landed by these vessels was \$54,651 (2014 dollars). Vessels that caught and landed black sea bass may also operate in other fisheries, the

revenues of which are not known and are not reflected in these totals. Based on revenue information, all commercial vessels directly affected by the final rule may be assumed to be small entities.

Because all entities expected to be directly affected by this final rule are assumed to be small entities, NMFS has determined that this final rule will affect a substantial number of small entities. However, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This final rule modifies the November 1 through April 30 annual prohibition on the use of black sea bass pot gear in the South Atlantic EEZ by allowing black sea bass pot fishing at depths greater than approximately 25 m from November 1 through 30, and April 1 through 30, from approximately Daytona Beach, Florida, to the Georgia/South Carolina border and off North and South Carolina; at depths greater than approximately 25 m from December 1 through March 31, from approximately Cape Canaveral, Florida, to Savannah, Georgia; and, at depths greater than approximately 30 m from December 1 through March 31 off North and South Carolina. In addition, this final rule requires black sea bass pot endorsement holders to put three 12-inch (30.5 cm) purple markings on each sea bass pot buoy line adjacent to the already required color markings on these lines under the ALWTRP. The marks are commonly made with either paint or surveyor's tape. As described in the codified text to this final rule, other materials may also be used for marking the line.

The modification to the current prohibition on the use of black sea bass pot gear will have contrasting economic effects on the two major groups of participants in the commercial harvest of black sea bass. This action will benefit those using pots for

harvesting black sea bass, and given that the commercial annual catch limit (ACL) is predicted to be fully harvested, benefits to users of other fishing gear, such as hook-and-line, will decrease. The combined dockside revenues (2014 dollars) for all sea bass pot gear vessels are estimated to increase annually between \$113,964 and \$185,068 based on 2000-2013 average black sea bass price, or between \$163,606 and \$260,355 based on 2011-2013 average black sea bass price. Two price levels are used to provide a limit on the range of revenue effects. The lower limit is based on the 2000-2013 average black sea bass price and the upper limit is based on the 2011-2013 average black sea bass price. In contrast, the combined dockside revenues (2014 dollars) for all non-black seas bass pot gear vessels are estimated to decrease annually between \$68,323 and \$141,527 based on 2000-2013 average black sea bass price, or between \$116,650 and \$241,631 based on 2011-2013 the average black sea bass price. The net revenue change for all vessels combined will be between \$43,541 and \$46,367 based on 2000-2013 average price for black sea bass, or between \$43,889 and \$46,553 based on 2010-2013 average price for black sea bass. Assuming that revenue increases for users of pot gear will be equally distributed among the 32 endorsement holders, revenues per pot endorsement holder will increase annually between \$3,561 and \$5,783, or between \$5,113 and \$8,136. However, revenue per vessel for the 215 users of non-pot gear will decrease between \$318 and \$658, or between \$543 and \$1,124. For vessels using black seas bass pot gear, the expected revenue increases will be approximately 9 to 21 percent of their average annual revenue of \$38,715 per vessel. However, revenue losses to vessels using fishing gear other than black sea bass pots will be between 1 and 2 percent of their average annual revenue of \$54,651 per vessel. Therefore, on a per vessel basis, the revenue gains to the black seas bass pot



endorsement holders could potentially be substantial, whereas the revenue losses to the other fishing gear users will be relatively small.

The requirement for black sea bass pot endorsement holders to put three 12-inch (30.5 cm) purple markings on each black sea bass pot buoy line adjacent to the already required colors required under the ALWTRP will cost each endorsement holder about an additional \$5 annually if surveyor's tape is used, or about an additional \$90 annually if paint is used instead.

The following discussion describes the alternatives that were not selected as preferred by the Council. In this section, the term "overall revenues" refers to the sum of revenues from all vessels using black sea bass pots and revenues from all vessels using gear other than black sea bass pots for harvesting black sea bass.

Twelve alternatives, including the preferred alternative as described above, were considered for modifying the November 1 through April 30 prohibition on the use of black sea bass pot gear. The first alternative, the no action alternative, would maintain the current economic benefits to all participants in the fishery as well as provide the least likelihood of right whales getting entangled with black sea bass pot lines. However, this alternative would not address the need to reduce the adverse socioeconomic effects resulting from the current prohibition on the use of black sea bass pot gear.

The second alternative would apply the black sea bass pot closure to the area previously designated as North Atlantic right whale critical habitat from November 15 through April 15. This alternative would provide slightly more increases in overall revenues to commercial vessels than the preferred alternative, but it would also pose the highest risk of right whale entanglement with black sea bass pot buoy lines.

The third alternative would apply the black sea bass pot closure from approximately Ponce Inlet, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Relative to the preferred alternative, this alternative would result in higher overall revenue increases but would also decrease protection to right whales from getting entangled with pot buoy lines.

The fourth alternative would apply the black sea bass pot closure from approximately Cape Canaveral, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Although this alternative would provide increased protection to right whales from entanglement with black sea bass pot buoy lines, it would result in smaller overall revenue increases than the preferred alternative.

The fifth alternative would apply the black sea bass pot closure from approximately Daytona Beach, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Relative to the preferred alternative, this alternative would provide slightly more increases in overall revenues to commercial vessels but would provide less protection to right whales from entanglement with black sea bass pot buoy lines.

The sixth alternative would apply the black sea bass pot closure from approximately Sebastian Inlet, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Although this alternative would provide the second greatest protection in comparison with the other alternatives in Regulatory Amendment 16 to right whales from entanglement with pot buoy lines, it would result in lower overall revenue increases than the preferred alternative.

The seventh alternative would apply the black sea bass pot closure from approximately the Altamaha River, Georgia, to Cape Hatteras, North Carolina, with the

following sub-alternatives: annually from November 1 through December 15 and March 15 through April 30; annually from November 1 through December 15 and March 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida; and, annually from February 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida. Relative to the preferred alternative, this alternative and its sub-alternatives would result in relatively higher overall revenue increases but would provide much reduced protection to right whales from entanglement with sea bass pot buoy lines.

The eighth alternative would apply the black sea bass pot closure from approximately Daytona Beach, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 15; or annually from November 1 through December 15 and February 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida. Relative to the preferred alternative, this alternative and its sub-alternatives would result in higher overall revenue increases but would result in a much reduced protection to right whales from entanglement with pot buoy lines.

The ninth alternative would apply the black sea bass pot closure from approximately Daytona Beach, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 15; or annually from November 1 through December 15 and February 15 through April 30 for the area off North Carolina and South Carolina, and from November 15 through April 15 for the area off Georgia and Florida. Relative to the preferred alternative, this alternative and its sub-alternatives would result in higher overall

revenue increases but would result in much reduced protection to right whales from entanglement with pot buoy lines.

The tenth alternative would apply the black sea bass pot closure from approximately the Georgia/South Carolina border, to Cape Hatteras, North Carolina, annually from November 1 through December 15, with the following provision: from February 15 through April 30, the black sea bass pot closure applies to certain inshore waters from approximately the Georgia/South Carolina border, to Cape Hatteras, North Carolina; from December 16 through February 14, there would be no closure off of the Carolinas; from November 15 through April 15, the black sea bass pot closure applies to certain inshore waters from approximately the Georgia/South Carolina border, to approximately Daytona Beach, Florida. Relative to the preferred alternative, this alternative would result in higher overall revenue increases but would result in much reduced protection to right whales from entanglement with pot buoy lines.

The eleventh alternative would apply the black sea bass pot closure from approximately Cape Canaveral, Florida, to Cape Hatteras, North Carolina, annually from November 1 through April 30. Relative to the preferred alternative, this alternative would result in higher overall revenue increases but would result in slightly reduced protection to right whales from entanglement with black sea bass pot buoy lines.

Four alternatives, including the preferred alternative, were considered in addition to the existing ALWTRP buoy line/weak link gear requirements and buoy line rope marking for black sea bass pots in the South Atlantic. The first alternative, the no action alternative, would not impose any additional cost on fishermen when fishing for black sea bass using pots but it would not meet the need for the action. The second alternative, with two

sub-alternatives, would impose requirements in addition to those required under the current ALWTRP for black sea bass pot buoy lines from November 1 through April 30 in Federal waters in the South Atlantic. The first sub-alternative would require that the breaking strength for buoy lines not exceed 2,200 lb (997 kg) and the second sub-alternative would require that the breaking strength for buoy lines not exceed 1,200 lb (544 kg). The first sub-alternative is what is currently required under the ALWTRP in the Southeast U.S. Restricted Area North and would affect only about 17 pot endorsement holders in North Carolina. The estimated cost to each of these 17 fishermen is a maximum of \$716. The second sub-alternative would impose the same cost per fisherman of \$716 but would affect all 32 pot endorsement holders. The third alternative would require that the breaking strength of the weak links of the buoy lines must not exceed 400 lb (181 kg) for black sea bass pots in the South Atlantic EEZ. This alternative is a decrease from the current requirement of 600 lb (272 kg) breaking strength of the weak links under the ALWTRP, and is estimated to cost each of the 32 pot endorsement holders \$65. Relative to the preferred alternative, all these alternatives, except the no action alternative, would impose higher costs upon fishermen using black sea bass pots.

This final rule contains a revised collection-of-information requirements subject to the PRA, which has been approved by OMB under control number 0648-0358. NMFS estimates the public reporting burden for the sea bass pot gear marking will result in an additional annual cost of up to \$90 per sea bass pot endorsement holder and require up to an additional 3.5 hours per response per year. Based upon feedback from fishermen, the cost and time burden for the marking requirement may be slightly lower in subsequent years depending on the marking method used. However, NMFS estimates the requirement

to endorsement holders will result in the same for cost and time burden for each subsequent year, because different materials used to mark sea bass pot gear are available and the longevity of the markings vary depending on factors such as the length of the fishing season and how often the gear is used. This estimate of the public reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number. All currently approved NOAA collections-of-information may be viewed at [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

There are provisions in this final rule that are exempt from the requirement to delay the effectiveness of a final rule by 30 days after publication in the **Federal Register**, under 5 U.S.C. 553(d)(3). Specifically, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the delay in the effective date for the revised time and area closures specific to the use of black sea bass pot gear in the South Atlantic EEZ set forth in § 622.183(b)(6), since

these measures increase the allowable area and time available to this fishing gear type for the regulated community during the fishing year. Delaying implementation of these measures for black sea bass could result in snapper-grouper fishermen not having the opportunity to achieve optimum yield from this stock, because the black sea bass pot component of the commercial sector would have less time available during the year to harvest the ACL before the fishing year's end, thereby undermining the intent of the rule. Additionally, a delay in implementation for these measures would not allow fishers using black sea bass pot gear to begin fishing with that gear as soon as possible, which would therefore minimize the potential socioeconomic benefits of this final rule and be contrary to the purpose of Regulatory Amendment 16. Thus, not waiving the 30-day delay of effectiveness for these black sea bass pot gear closure provisions is unnecessary and contrary to the public interest, as a delay in implementation may negatively impact black sea bass pot fishers and be inconsistent with the purpose of this final rule with respect to reducing the socioeconomic impacts of the current closure. Therefore, a delay in effectiveness would diminish the social and economic benefits for snapper-grouper fishermen this final rule provides, which is part of the purpose of the rule. Thus, the measures applicable to the black sea bass pot gear area and seasonal closure in this final rule are effective upon publication.

## List of Subjects in 50 CFR Part 622

Annual catch limits, Black sea bass, Fisheries, Fishing, South Atlantic.

Dated: December 22, 2016.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

### **PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.183, revise paragraph (b)(6) to read as follows:

#### **§ 622.183 Area and seasonal closures.**

\* \* \* \* \*

(b) \* \* \*

(6) *Seasonal closure of the commercial black sea bass pot component of the snapper-grouper fishery.* The closed area is that area and time period described in paragraphs (b)(6)(i) and (b)(6)(ii) of this section, respectively. During the applicable closure, no person may harvest or possess black sea bass in or from the closed area within



the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board, except that a vessel with a valid commercial permit for snapper-grouper with a sea bass pot endorsement that is in transit and with black sea bass pot gear appropriately stowed as described in paragraph (b)(6)(iii) of this section may possess black sea bass. In addition, sea bass pots must be removed from the water in the applicable closed area within the South Atlantic EEZ before the applicable time period, and may not be on board a vessel in the closed area within the South Atlantic EEZ during the applicable closure, except for such sea bass pot gear appropriately stowed on board a vessel in transit through the closed area. See paragraph (b)(6)(iii) of this section for black sea bass pot transit and gear stowage requirements through the closed areas.

(i) From November 1 through November 30 and from April 1 through April 30, no person may harvest or possess black sea bass in or from the closed area within the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board in the South Atlantic EEZ inshore of the rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
1	35°15'	State/EEZ boundary
2	35°15'	75°09'
3	35°06'	75°22'
4	35°06'	75°39'
5	35°01'	75°47'

6	34°54'	75°46'
7	34°52'	76°04'
8	34°33'	76°22'
9	34°23'	76°18'
10	34°21'	76°27'
11	34°25'	76°51'
12	34°09'	77°19'
13	33°44'	77°38'
14	33°25'	77°27'
15	33°22'	77°40'
16	33°28'	77°41'
17	33°32'	77°53'
18	33°22'	78°26'
19	33°06'	78°31'
20	33°05'	78°40'
21	33°01'	78°43'

22	32°56'	78°57'
23	32°44'	79°04'
24	32°42'	79°13'
25	32°34'	79°23'
26	32°25'	79°25'
27	32°23'	79°37'
28	31°53'	80°09'
29	31°31'	80°33'
30	30°43'	80°49'
31	30°30'	81°01'
32	29°45'	81°01'
33	29°31'	80°58'
34	29°13'	80°52'
35	29°13'	State/EEZ boundary

(ii) From December 1 through March 31, no person may harvest or possess black sea bass in or from the closed area within the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board in the South Atlantic EEZ inshore of the rhumb

lines connecting, in order, the following points:

Point	North lat.	West long.
1	35°15'	State/EEZ boundary
2	35°15'	75°08'
3	34°58'	75°41'
4	34°49'	75°50'
5	34°47'	76°05'
6	34°31'	76°18'
7	34°20'	76°13'
8	34°12'	77°00'
9	33°43'	77°30'
10	33°21'	77°21'
11	33°18'	77°41'
12	33°22'	77°56'
13	33°12'	78°20'
14	33°05'	78°22'
15	33°01'	78°38'

16	32°40'	79°01'
17	32°36'	79°18'
18	32°19'	79°22'
19	32°16'	79°37'
20	32°03'	79°48'
21	31°39'	80°27'
22	30°58'	80°47'
23	30°13'	81°01'
24	29°32'	80°39'
25	29°22'	80°44'
26	28°50'	80°22'
27	28°21'	80°18'
28	28°21'	State/EEZ boundary

(iii) For the purpose of paragraph (b)(6) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means all black sea bass pot gear must be out of the water and on board the deck of the vessel. All buoys must either be disconnected from the gear or stowed within the sea bass pot. Disconnected buoys may

remain on deck.

\* \* \* \* \*

3. § 622.189, add paragraph (g) to read as follows:

**§ 622.189 Restrictions and requirements for sea bass pots.**

\* \* \* \* \*

(g) *Sea bass pot buoy line marking requirement.* In addition to the gear marking requirements specified in 50 CFR 229.32(b), from November 15 through April 15, each year, in the Southeast U.S. Restricted Area North as described in 50 CFR 229.32(f) and from September 1 through May 31, each year in the Offshore Trap/Pot Waters Area and the Southern Nearshore Trap/Pot Waters Area, as described in 50 CFR 229.32(c)(6) and (9), respectively, the buoy line must be marked with a purple color band. The colored band must be clearly visible when the gear is hauled or removed from the water, including if the color of the rope is the same as, or similar, to the colored band. The purple band must be marked directly onto the line and adjacent to the buoy line markings specified in 50 CFR 229.32(b), that is, at the top, middle, and bottom of each buoy line deployed by, or on board, the vessel. Each of the three purple bands must be a 12-inch (30.5 cm) color mark. In marking or affixing the purple band, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material.

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